

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

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) MDL No. 1456
)

) Civil Action No. 01-12257-PBS
)

THIS DOCUMENT RELATES TO:
ALL CLASS ACTIONS

) Judge Patti B. Saris
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**SCHERING-PLOUGH CORPORATION'S AND WARRICK PHARMACEUTICALS
CORPORATION'S RESPONSE TO CLASS PLAINTIFFS' RULE 56(F) AFFIDAVIT**

Defendants Schering-Plough Corporation ("Schering") and Warrick Pharmaceuticals Corporation ("Warrick") respectfully submit this response to Class Plaintiffs' Rule 56(f) Affidavit in Support of Refusal of Summary Judgment ("Plaintiffs' Affidavit"). For the reasons set forth below, Plaintiffs' request should be denied as to Schering and Warrick.

A party requesting relief under Fed. R. Civ. P. 56(f) must identify specific, material evidence that it is likely to uncover within a reasonable time. *See, e.g., C.B. Trucking, Inc. v. Waste Mgt., Inc.*, 137 F.3d 41, 44-45 (1st Cir. 1998). Here, Plaintiffs fail to identify any evidence – much less specific, material evidence – that they hope to receive from Schering or Warrick. They are also silent as to discovery relating to Class Two, the only class certified against Schering and Warrick and the only class as to which Schering and Warrick seek summary judgment. Plaintiffs' generic and unsubstantiated references to "*Defendants'* discovery violations" are plainly inadequate to delay decision on Schering's and Warrick's Motion for Summary Judgment. (Pls.' Aff. ¶¶ 3, 22 (emphasis added).)

Because Plaintiffs' request fails to meet the standards of Fed. R. Civ. P. 56(f), Plaintiffs' request should be **DENIED** as to Schering and Warrick.

Respectfully submitted,

SCHERING-PLOUGH CORPORATION AND
WARRICK PHARMACEUTICALS
CORPORATION

By their attorneys,

/s/ Eric P. Christofferson

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Dated: April 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Eric P. Christofferson
Eric P. Christofferson